

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHEILA L. FIELDS and U.S. POSTAL SERVICE,
VEHICLE MAINTENANCE FACILITY, Atlanta, GA

*Docket No. 99-1040; Submitted on the Record;
Issued June 19, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly found that the evidence established that appellant's employment-related disability had ceased effective August 16, 1997, the date compensation benefits were terminated.

On July 17, 1994 appellant filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that her toxic effects petroleum based chemicals, hypothyroidism and toxic brain syndrome were due to chronic exposure to petroleum chemicals and other workplace chemical exhaust fumes. On the reverse side of the form, it was noted that appellant was last exposed on May 21, 1994. On October 19, 1995 the Office accepted appellant's claim for neurotoxicity and toxic brain syndrome. On December 27, 1995 the Office placed appellant on the rolls for temporary total disability.

In an attending physician's supplemental report dated April 17, 1996, Dr. Alan D. Lieberman¹ diagnosed multiple chemical sensitivity, toxic brain syndrome and hypothyroidism and opined that she was totally disabled from performing any work for at least one year.

On April 18, 1996 the Office referred appellant, together with a statement of accepted facts, medical records, and list of questions, to Dr. Richard B. Bernstein² for a second opinion on whether appellant has any continuing residual disability due to her accepted injury.

In a report dated May 6, 1996, Dr. Bernstein, based upon a review of the medical records, physical examination and statement of accepted facts, opined that appellant had no organic neurological disease due to her exposure to toxins and that she was capable of returning to her usual employment. In his final clinical impression, Dr. Bernstein diagnosed suspect chronic

¹ An attending physician Board-certified in pediatrics and consultant in occupational and environmental medicine.

² Board-certified in neurology.

anxiety and depression; suspect impaired immediate memory and found no evidence for toxic neuromuscular disease.

In a letter dated June 13, 1996, Dr. Lieberman disagreed with Dr. Bernstein's evaluation of appellant. Dr. Lieberman opined that appellant had "the classical signs and symptoms of neurotoxicity which primarily affects neurocognitive function." He further noted that "Dr. Bernstein's order for an Minnesota Multiphasic Personality Inventory demonstrates another failure on his part in that he does not recognize that this test was never standardized for patients with toxic brain syndrome and can only be falsely interpreted because of the very nature of the questions."

In a letter dated March 6, 1997, the employing establishment submitted an investigative report of their limited observation of appellant during the period July 11, 1996 through January 30, 1997. In the investigative report, the employing establishment noted that appellant was capable of performing her normal daily activities with no fatigue and no precautions taken to prevent further environmental exposures.

By letter dated April 17, 1997, the Office referred appellant to Dr. Lorne Garrettson³ to resolve the conflict in the medical opinion evidence between Dr. Lieberman, appellant's attending physician, who opined that appellant was totally disabled due to her accepted employment injury and Dr. Bernstein, a second opinion physician, who opined that appellant had no residual disability from her accepted employment injury and could return to work.

In a report dated May 24, 1997, Dr. Garrettson, based upon a review of the medical record, appellant's position description, statement of accepted facts and physical examination, opined that appellant "had approximately 10 years of light organic solvent exposure" which would be "insufficient to cause any permanent neurological deficits." He also opined that the exposure levels would unlikely to have been sufficient to cause appellant's chronic fatigue symptoms or her complaints about memory and concentration. In response to the Office's question, Dr. Garrettson opined that appellant has no disability due to her exposure to chemical fumes at the employing establishment. He also indicated that appellant could return to work without any restrictions.

By notice of proposed termination of compensation dated July 11, 1997, the Office advised appellant that her compensation benefits would be terminated based upon Dr. Garrettson's well-rationalized and complete medical report, which demonstrated that appellant had no further residuals from her accepted employment injury. The Office determined, based upon Dr. Garrettson's report, that her current disability was not due to her exposure to toxic chemicals at work.

Appellant responded to the Office's proposed termination on August 10, 1997 and submitted reports from Dr. Lieberman dated June 13 and December 10, 1996, April 21 and July 16, 1997 and an August 4, 1997 report from Dr. Albert F. Robbins in response to the proposed notice of termination.

³ Board-certified in pediatrics and specializing in environmental and occupational medicine at the Emory Clinic.

In the August 4, 1997 report, Dr. Robbins diagnosed appellant as suffering from severe fatigue, confusion and other neurological symptoms and opined that “she may not be able to work full time” due to her continuing symptoms.

In attending physicians reports (Form CA-20a) dated July 16, 1997 and December 10, 1996, Dr. Lieberman diagnosed toxic effects petro, toxic brain syndrome and hypothyroidism and indicated that appellant could return to work provided appropriate accommodation was made.

In a letter dated April 21, 1997, Dr. Lieberman opined that appellant was totally disabled due to her “work-related injury from long exposure to petroleum based product.” However, he indicated that appellant was capable of working part time provided the employing establishment provided “appropriate accommodation” at a reasonable distance from her home.

By decision dated August 13, 1997, the Office finalized its decision to terminate appellant’s compensation and medical benefits effective August 16, 1997 for the reason that her condition had resolved. The Office found that the weight of the medical opinion evidence was represented by the report of Dr. Garrettson acting as an independent medical examiner, who concluded that the effects of the accepted toxic brain syndrome injury had resolved.

In a letter dated August 4, 1998, appellant requested reconsideration of the termination of her benefits and submitted a July 10, 1998 letter from Dr. Lieberman, a March 17, 1998 brain scan by Dr. Theodore R. Simon and a March 16, 1998 neuropsychological examination by Dr. Nancy A. Didriksen.

Dr. Lieberman stated that appellant’s neuropsychological evaluation revealed an 80 percent impairment of appellant’s brain-related abilities which was “consistent with toxic encephalopathy secondary to exposure to toxic chemicals.”

In a brain scan dated March 17, 1998, Dr. Simon noted:

“The mismatch between the early and late phases, temporal lobe asymmetry, “salt and pepper” pattern, and the redistribution to the soft tissues constitute a pattern which has been seen in patients with neurotoxic exposure.”

In her March 16, 1998 report, Dr. Didriksen, based upon psychological testing, observance of appellant and history, diagnosed toxic encephalopathy and recommended that appellant continue to avoid neurotoxins, consider a neurocognitive rehabilitation program, relaxation and stress management training and continued medical retirement benefits.

By decision dated October 22, 1998, the Office denied appellant’s request on the basis that the evidence was insufficient to warrant modification of the prior decision. The Office found that the opinions of Drs. Didriksen, Lieberman and Simon were insufficient to outweigh Dr. Garrettson’s report as they provided no medical rationale to support their opinions.

The Board finds that the Office properly found that the evidence established that appellant’s employment-related disability had ceased effective August 16, 1997, the date compensation benefits were terminated.

It is well established that, once the Office accepts a claim, it has the burden of justifying termination or modification of compensation.⁴ After it has been determined that an employee has disability causally related to his or her employment, the Office may not terminate compensation without first establishing that the disability has ceased or that it is no longer related to the employment.⁵

In this case, the Office accepted appellant's claim for neurotoxicity and toxic brain syndrome. Appellant's attending physician, Dr. Lieberman opined that appellant was totally disabled due to her toxic brain syndrome. On the other hand Dr. Bernstein opined that appellant was no longer totally disabled due to her toxic brain syndrome and neurotoxicity

Section 8123(a) of the Federal Employees' Compensation Act provides: "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."⁶ Because of the conflict in medical opinion evidence between Drs. Lieberman and Bernstein, the Office referred appellant to an impartial medical examiner, Dr. Garrettson, a Board-certified pediatrician. In his May 27, 1997 report, Dr. Garrettson opined that appellant no longer suffered from the effects of her exposure to toxic chemicals.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷ As Dr. Garrettson's report was well rationalized and was based on a complete factual and medical background, it represents the weight of the medical evidence and establishes that appellant's work-related residuals had ceased.

Thereafter, appellant submitted reports from Drs. Lieberman, Simon and Didriksen. The reports of Drs. Didriksen and Simon are insufficient as neither offered an opinion as to whether appellant's disability was causally related to her accepted employment injury. The Board notes that Dr. Garrettson was selected to resolve the conflict in medical opinions between Drs. Lieberman and Bernstein. For this reason, the subsequent report of Dr. Lieberman which was essentially repetitive of his prior reports is insufficient to outweigh the special weight given the report by Dr. Garrettson as Dr. Lieberman had participated in the creation of the medical conflict which was referred to Dr. Garrettson for resolution.⁸

Regarding Dr. Didriksen's opinion, section 8101(2) of the Act, provides that the term "physician" includes clinical psychologists such as Dr. Didriksen.⁹ However, the Board notes

⁴ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁵ *Id.*

⁶ 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁸ *Josephine L. Bass*, 43 ECAB 929 (1992); *see Dorothy Sidwell*, 41 ECAB 857 (1990).

⁹ *See Helen E. Tschantz*, 39 ECAB 1382 (1988).

that the issue in this case, whether appellant continued to have any residual disability due to her accepted employment injury of neurotoxicity and toxic brain syndrome is a medical one and, therefore, the opinion of Dr. Didriksen, who does not hold a medical degree, is not relevant to this specific issue and does not constitute evidence to support that modification of the decision terminating appellant's compensation benefits was merited.

Thus, the opinions of Drs. Lieberman, Simon and Didriksen are insufficient to create a conflict in the medical opinion evidence with the well-rationalized and complete medical report by Dr. Garrettson.¹⁰ Consequently, Dr. Garrettson's report remained the weight of the medical opinion evidence in this case and established that appellant had no continuing disability after August 16, 1997 causally related to her May 21, 1994 accepted employment injury. Therefore, appellant has not established that the Office erred in not modifying the termination of her benefits.

The decision of the Office of Workers' Compensation Programs dated October 22, 1998 is hereby affirmed.

Dated, Washington, D.C.

June 19, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

¹⁰ *Connie Johns*, 44 ECAB 560 (1993); *see also Billie C. Rae*, 43 ECAB 192 (1991) and cases cited therein.